

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

77-6218

To be argued by
Marc KahnUNITED STATES COURT OF APPEALS
For the Second Circuit

LYNN ARGO, ARNOLD ARGO, HELEN DENNIS, JAY GROSSMAN, JUDY SWEDE, individually and as Directors of Birchwood Towers Tenants Association, Inc., MAX WULFSON and DORA FRIEDMAN, individually and BIRCHWOOD TOWERS TENANTS ASSOCIATION, INC.,

Plaintiffs-Appellants

-against-

PATRICIA HARRIS, individually and as Secretary of Housing and Urban Development of the United States; MORRIS SOSNOW, KATE SOSNOW, LEONARD R. SCHWARTZ, JERROLD A. LIEBERMAN, BERNICE LIEBERMAN, and LORRAINE S. SANFORD, doing business as Birchwood Towers #1 Associates and doing business as Birchwood Towers #2 Associates; THE CONCILIATION AND APPEALS BOARD,

Defendants-Appellees,

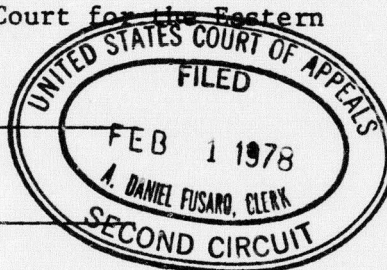
-and-

THE HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK,

Defendant-Cross Appellant.

On Appeal of a Preliminary Injunction, pursuant to 28 U.S.C. Section 1292 (a)(1), from the United States District Court for the Eastern District of New York.

APPELLANTS' BRIEF



ROSENSTEIN & KAHN, Esqs.
Attorneys for Plaintiffs-Appellants
225 Broadway
New York, N.Y. 10007
(212) 374-1438

MARC KAHN
BARNEY ROSENSTEIN
Of Counsel.

UNITED STATES COURT OF APPEALS

For the Second Circuit

LYNN ARGO, ARNOLD ARGO, HELEN DENNIS, JAY GROSSMAN, JUDY
SWEDE, individually and as Directors of Birchwood Towers
Tenants Association, Inc., MAX WULFSON and DORA FRIEDMAN,
individually and BIRCHWOOD TOWERS TENANTS ASSOCIATION,
INC.,

Plaintiffs-Appellants

-against-

PATRICIA HARRIS, individually and as Secretary of Housing
and Urban Development of the United States; MORRIS SOSNOW,
KATE SOSNOW, LEONARD R. SCHWARTZ, JERROLD A. LIEBERMAN,
BERNICE LIEBERMAN, and LORRAINE S. SANFORD, doing business
as Birchwood Towers #1 Associates and doing business as
Birchwood Towers #2 Associates; THE CONCILIATION AND
APPEALS BOARD,

Defendants-Appellees,

-and-

THE HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF
NEW YORK,

Defendant-Cross Appellant.

APPELLANTS' BRIEF

TABLE OF CONTENTS

	PAGE
PRELIMINARY STATEMENT.....	1
FACTS.....	4
APPELLANTS' CONTENTIONS.....	9
POINT I--The District Court erred by requiring the payment of HUD Jeopardy Rents pursuant to a HUD Order dated 9-1-76 which had been issued without due process of law.....	10
POINT II--The Defendants Birchwood Towers #1 Associates and Birchwood Towers #2 Associates are estopped from claiming irreparable injury by reason of the stipulation dated November 12, 1976.....	15
CONCLUSION.....	16

Cases Cited

American Cold Storage Co. v. City of Chicago, 221 U.S. 306 (1908).....	10
Armstrong v. Manzo, 380 U.S. 545 (1965).....	10
Arnett v. Kennedy, 416 U.S. 134 (1974).....	10
Baldwin v. Hale, 68 U.S. (1 Wall.) 223 (1863)....	10
Bell v. Burson, 402 U.S. 535 (1971).....	10
Berrigan v. Norton, 451 F.2d 790 (2d Cir. 1971)..	15
Boddie v. Connecticut, 401 U.S. 371 (1971).....	11
Burr v. New Rochelle Municipal Housing Authority, 479 F.2d 1165 (2d Cir. 1973).....	12

TABLE OF CONTENTS

	PAGE
Caramico v. Secretary of Department of Housing and Urban Development, 509 F.2d (2d Cir. 1974).....	12
Chris Craft Industries, Inc. v. Bangor Punta Corp., 526 F.2d 569 (2d Cir. 1970).....	15
Coe v. Armour Fertilizer Works, 237 U.S. 413 (1915).....	13
Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594 (1950).....	10
Feld v. Berger, 424 F.S. 1356 (S.D.N.Y. 1977)....	10
515 Associates v. City of Newark, 424 F.S. 984 (D.N.J. 1977).....	10,11,12
Fuentes v. Shevin, 407 U.S. 67 (1972).....	10,11,13
Gramercy Spire Tenants' Association v. Harris, F.S. (S.D.N.Y. 1977)(Civil Action No. 76C4028 [W.C.C.]).....	12,14
Jacobson & Co., Inc. v. Armstrong Cork Co., 548 F.2d 438 (2d Cir. 1977).....	15
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951).....	14
Langevin v. Chenango Court, Inc., 447 F.2d 296 (2d Cir. 1971).....	14
Londoner v. City and County of Denver, 210 U.S. 373 (1908).....	11
Manners v. Secretary of H.U.D., 333 F.S. 829 (E.D.N.Y. 1971).....	12
Ohio Bell Telephone Co. v. Public Utilities Com- missioner, 401 U.S. 292 (1937).....	14
Opp Cotton Mills v. Administrator, 312 U.S. 126 (1941).....	11
San Felippo v. United Brotherhood of Carpenters and Joiners of America, 525 F.2d 508 (2d Cir. 1975).....	15

TABLE OF CONTENTS

	PAGE
Stanley v. Illinois, 405 U.S. 645 (1972).....	13

Rules Cited

24 C.F.R. 403.1 (1975).....	1,5,6,7
24 C.F.R. 401 (1975).....	5

Statutes Cited

National Housing Act, 12 U.S.C. Sec. 1713...	5
Rent Stabilization Law of 1969, New York City Administrative Code, Sec. YY51-1.0...	1,7,8

Other Authorities Cited

U.S. Constitution, Fifth Amendment.....	8,10
U.S. Constitution, Fourteenth Amendment.....	10
Code of the Rent Stabilization Association of N.Y.C., Inc.....	6

PRELIMINARY STATEMENT

Plaintiffs are individual tenants and their tenants' association at Birchwood Towers, a housing development in Forest Hills, Queens County. Plaintiffs initiated this action by Order to Show Cause dated October 19, 1976. They sought injunctive and declaratory relief from the pre-emption of local rent controls, Rent Stabilization Law of 1969, New York City Administrative Code, Section YY51-1.0; McKinney's Unconsolidated Laws, Book 65, Section 587, by the Department of Housing and Urban Development (HUD). Pursuant to 24 C.F.R. 403.1 (1975), published October 22, 1975, at 40 F.R. 49318, HUD had issued a pre-emption order dated September 1, 1976 removing Birchwood Towers from local rent controls. HUD acted in response to an ex parte application by the defendants, Birchwood Towers #1 and #2 Associates, (the owners). The application was made without notice to the plaintiffs, and HUD provided no notice or opportunity to be heard to any tenant prior to issuing its order.

The owners moved subsequently by Order to Show Cause for injunctive relief directing that payments be made pursuant to the pre-emption order, and declaring the validity of the pre-emption rule. The owners also sought designation of all residents of Birchwood Towers as members of a class for purposes of this litigation.

On November 12, 1976 the plaintiffs and owners entered into a stipulation which provided that the payment of HUD rent increases should be made to plaintiffs' attorneys and held in escrow (62a).^{*} After oral argument, the District Court rendered its opinion and order of January 13, 1977, reported sub nom Argo v. Hills, at 425 F.S. 151 (E.D.N.Y. 1977) (66a). Judge Platt granted the owners' motion for class action status but did not grant injunctive relief to either plaintiffs or the owners. The Court specifically held that HUD could not pre-empt the Rent Stabilization Law without providing the tenants with due process protections. (80a). The Court directed HUD to give plaintiffs an opportunity to

^{*}All references are to the appendix.

inspect the owners' application and submit written objections to HUD. After considering these objections, HUD was directed to issue a written decision on the pre-emption of this project. HUD allowed the plaintiffs to inspect the application and plaintiffs filed written objection with HUD. On October 11, 1977, HUD issued a second pre-emption order (120a) reaffirming the first pre-emption order.

On October 13, 1977, the owner served a notice of settlement of judgment, which plaintiffs opposed. Thereafter the owners served a notice of a presettled order of preliminary injunction which was signed by the Court on November 25, 1977. (125a). Plaintiffs appeal from this order, and specifically from paragraph 1 of the order which decrees that the HUD determination of October 11, 1977 reaffirming retroactively the pre-emption determination of September 1, 1976 lawfully and validly pre-empted local rent regulation of Birchwood Towers, and paragraph 3 of the order which decrees that commencing November 12, 1976 the HUD approved rents are the legal maximum rents which landlords are entitled to receive.

FACTS

The law knows few relationships more passionate than that of landlord and tenant, and few statutes whose merit more vigorously debated than the Rent Stabilization Law of the City of New York. On or about September 20, 1976, the residents of Birchwood Towers awoke and found posted in the lobby a proposed HUD jeopardy rent implementation schedule (22a), which provided for rent increases of up to 20%, effective November 1, 1976, for approximately one-half of Birchwood Towers' 754 families. The majority of increases were either 18% or 20%.

The tenants had received no prior notice of any kind from either the owner or HUD of the landlord's application, its contents, its review and approval by HUD, or the basis for the arbitrary assignment of rent increases among the tenants. On or about September 28, 1976, the owners sent each tenant a letter (46a-48a) explaining that HUD had pre-empted local rent controls and established a new rent schedule for Birchwood Towers. No written statement was received from HUD stating the

reason for the rent increases or the method by which they were determined.

Birchwood Towers was in fact pre-empted pursuant to 24 C.F.R. 403, Part B* promulgated by the Secretary of HUD. The rule authorized the department to pre-empt from local rent control on a case by case basis individual unsubsidized housing developments whose mortgages are insured by a department in any case where "the delay or decision of a board . . . jeopardizes the Department's economic interest in the projects."** The mortgages on the three high rise buildings comprising the development are insured under Section 207 of the National Housing Act as amended, 12 U.S.C. Section 1713. The owners first formally requested certificates of pre-emption for Birchwood Towers on May 7 and May 11, 1976

*Compare Part C, Section 403.8 through 403.10, which by its terms pre-empts all Federally insured and subsidized housing developments from local rent controls. For these projects, the rule incorporates Section 401, which mandates prior notice and some opportunity for tenants to be heard. See 24 C.F.R. 401.

**Section 403.5. The absence of any definition of the operative terms of the rule, and any criteria by which it is to be applied are noteworthy, but not particularly important for the limited purposes of this appeal.

(9a through 13a).* On September 1, 1976 HUD wrote directly to the owners to advise that HUD had pre-empted the development. HUD delegated to the owners the job of allocating the increase among the tenants (14a).** No prior notice of these transactions was given to any tenant, nor was any tenant given a written statement explaining the basis for the pre-emption increase or the computation of the total rent increases for the development.

Shortly thereafter, on October 19, 1976, plaintiffs commenced their law suit against HUD and the owners. Plaintiffs also sued the local rent agencies charged with the responsibility of administering the Rent Stabilization Law. Plaintiffs' fourth and fifth causes of action alleged that Rule 403 was defective on its face for

*The development was originally built in two stages. Each was assigned a separate FHA project number.

**Note that under §37 of the Code of the Rent Stabilization Association of N.Y.C., Inc., which governs special hardship rent increase applications under the Rent Stabilization Law, all tenants pay a uniform percentage increase.

failing to provide notice or opportunity for any kind of hearing (59a) and as applied for these reasons as well as others set forth in the complaint (60a). The owners and HUD, in their answers denied these claims.

On November 12, 1976, counsel for plaintiffs and for the owners stipulated and agreed that the disputed HUD rent increases should be held by plaintiffs' counsel in escrow, until it was finally determined, after all appeals whether the HUD pre-emption was valid or not. The Court signed an order setting out that agreement (62a). Subsequently, on January 13, 1977, the Court issued its opinion and order (66a). Judge Platt found that Rule 403 was consistent with the Secretary's statutory authority and was a reasonable means of exercising that authority (71a). The Court also found that a conflict existed between the Rent Stabilization Law and Rule 403 (72a). With respect to plaintiffs' due process claims, the Court found that there was sufficient governmental involvement to invoke "the due process issue" (77a), and that the tenants had a legitimate expectation that the Rent Stabilization Law would govern

rent increases which rose to the level of a property interest protected by the Fifth Amendment (79a). The Court then held that HUD could not pre-empt the Rent Stabilization Law without providing due process, (80a) but went on to state that if HUD provided the requisite due process and then decided pre-emption was "necessary", the escrow agents should pay the funds held by them to the landlord (82a).

The tenants submitted comments to HUD, and HUD issued its second order. Based upon the second order, the Court signed the preliminary injunction from which plaintiffs now appeal.

APPELLANTS' CONTENTIONS

1. The H.U.D. order of September 1, 1976 was null and void for want of due process.
2. The Court erred by failing to void the H.U.D. order of September 1, 1976 and by applying the H.U.D. order of October 11, 1971 retroactively.
3. The Court erred in granting preliminary injunctive relief to the owners.

POINT I

THE DISTRICT COURT ERRED BY REQUIRING THE PAYMENT OF H.U.D. JEOPARDY RENTS PURSUANT TO AN H.U.D. ORDER WHICH HAD BEEN ISSUED WITHOUT DUE PROCESS OF LAW.

For more than a century, the central meaning of procedural due process has been clear:

Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Fuentes v. Shevin, 407 U.S., 67, 80 (1972), citing Baldwin v. Hale, 68 U.S. (1 Wall.) 223, 233 (1863); 515 Associates v. City of Newark, 424 F.S. 984 (D.N.J. 1977).

It is equally fundamental that the right to notice and opportunity to be heard must be granted at a meaningful time and in a meaningful manner. Fuentes, supra at 80; Armstrong v. Manzo, 380 U.S. 545, 522 (1965). See also Feld v. Berger, 424 F.S. 1356 (S.D.N.Y. 1977) (Weinfeld, J.).

Apart from a very limited class of special situations, such as food and drug health hazard cases,* the Supreme Court has always interpreted the due process clauses of the Fifth and Fourteenth Amendments to require that notice and opportunity to be heard must be provided before a deprivation of property takes effect. See, e.g. Arnett v. Kennedy, 416 U.S. 134, 164 (1974); Fuentes, supra at 82, Bell v. Burson, 402 U.S.

*See, e.g. Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594 (1950); North American Cold Storage Co. v. City of Chicago, 221 U.S. 306 (1908).

535 (1971); Opp Cotton Mills v. Administrator, 312 U.S. 126, 152-53 (1941); Londoner v. City and County of Denver, 210 U.S. 373, 385-86 (1908). Indeed, the Court has characterized a hearing prior to deprivation as the "root requirement" of due process. Fuentes, supra, at 82; Boddie v. Connecticut, 401 U.S. 371, 378-79 (1971). If the right to notice and a hearing are to serve their constitutional purposes of assuring fair play and minimizing substantively unfair or mistaken deprivations of property by arbitrary government action, then they must be granted at a time when the deprivation can still be prevented. Fuentes, supra at 81.

In the 515 Associates case, cited above, Judge Stern held that H.U.D. could not preempt local rent controls without first granting the affected tenants notice and an opportunity for an appropriate hearing. Judge Stern recognized the constitutional limitation on arbitrary government activity and ruled that the government may not simply extinguish local rent control laws and impose new rent increases on nothing more than the ex parte application of a landlord.

We have moved beyond the time when government will assist landlords in imposing unilateral and ex parte rental charges....Under these circumstances some notice and opportunity to be heard must be given to tenants before the government subjects them to rents unlawful under a local ordinance. 515 Associates, supra, at 995.

The constitutional requirements of due process operate to restrain precisely this kind of arbitrary government conduct

by requiring that deprivations^{be} preceded by an opportunity to be heard, and voiding those deprivations which are not. In Burr v. New Rochelle Municipal Housing Authority, 479 F. 2d 1165 (2d Circ. 1973) this Court struck down an order imposing rent increases without prior notice given to tenants "well in advance" of the increase. Id. at 1170. Even as government financing and regulation of multifamily housing increases, this Court and others have nullified administrative orders which deprived tenants of their property rights and entitlements without prior notice and opportunity to be heard. See, e.g. Caramico v. Secretary of Department of Housing and Urban Development, 509 F.2d 694 (2d Cir. 1974); Burr, supra; Grammercy Spire Tenants' Association v. Harris, ____ F.S. ____ (S.D.N.Y. 1977) (Civil Action No. 76C4028 [W.C.C.] 515 Associates, supra; Manners v. Secretary of H.U.D., 333 F.S. 829 (E.D.N.Y. 1971).

In its opinion of January 13, 1977 (66a), the District Court below reached a correct legal conclusion, i.e. that H.U.D. could not validly preempt local rent controls without providing due process to the affected tenants at Birchwood Towers, but erred by failing to void the first preemption order and by directing instead, without explanation, that the monies collected under an invalid order be delivered to the owners if H.U.D. later decided, after notice and a hearing, that pre-emption was necessary. Similarly the

Court erred in the order appealed from when it characterized the second preemption order of October 11, 1977 (120a) as "reaffirming retroactively" the first preemption order, and decreed that commencing November 12, 1976, the H.U.D. approved rents are the legal maximum rentals (127a). The second order nowhere contains the word "retroactively," and there is nothing in the order or anywhere in the record to suggest that H.U.D. intended to ignore the constitution and apply its order retroactively to November 12, 1976.* Even assuming the Court correctly interpreted the second order, however, neither the Court nor the agency can breath life into an invalid order by applying a valid one retroactively. No subsequent hearing can undo the ineluctible fact that the arbitrary taking of property under the first order, which taking was subject to the right of procedural due process, has already occurred without due process. The Supreme Court has emphatically rejected the general proposition implicit in the District Court's opinion that a wrong may be done if it can be undone, Stanley v. Illinois, 405 U.S. 645,647 (1972); Fuentes, supra at 80, and has instead instructed that

*The fact that H.U.D. reached the same decision after hearing the tenants is neither germane nor relevant to the issue raised on this appeal. See Coe v. Armour Fertilizer Works, 237 U.S. 413,424 (1915); Fuentes, supra at 87.

There can be no compromise on the footing of convenience or expediency or because of a natural desire to be rid of harassing delay, when the minimal requirement of the right to a hearing as a rudiment of Due Process has been neglected or ignored. Ohio Bell Telephone Co. v. Public Utilities Commissioner, 401 U.S. 292,305 (1937).

See also Judge Oakes' dissent in Langevin v. Chenango Court, Inc., 447 F.2d 296 (2d Circ. 1971).

The above cited cases require that the first preemption order be declared null and void. The impropriety of applying an order retroactively to a time prior to the giving of notice and opportunity to be heard is particularly offensive in a preemption case, where H.U.D. made its initial determination covertly, and solely on the basis of the ex parte application of the landlord. Fairness can rarely be obtained by such secret one-sided determinations of facts decisive of individual rights. Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123,170-72 (1951) (Frankfurter, J. concurring). In the most recently decided preemption case, Grammercy Spire Tenants Association v. Harris, cited above, Judge Connor granted the tenants' cross-motion for summary judgment on their due process claim. In that case, Judge Connor, in his judgment explicitly decreed that the pre-emption order issued in that case was null and void and of no further force and effect.* The same decree is required in the instant case.

*A copy of the Court's judgment is appended hereto as Exhibit A.

POINT II

THE DEFENDANTS BIRCHWOOD TOWERS #1 & #2 ASSOCIATES ARE ESTOPPED FROM CLAIMING IRREPARABLE INJURY BY REASON OF THE STIPULATION DATED NOVEMBER 12, 1976.

The granting or denial of a preliminary injunction is ordinarily within the discretion of the trial court. Berrigan v. Norton, 451 F.2d 790,793 (2d Cir. 1971). In a case such as the instant appeal where no evidence was taken in open court, the standard on review of factual determinations is not whether the District Court has abused its discretion. Rather, the reviewing court is entitled to exercise its discretion and review the papers de novo. Jacobson & Co., Inc. v. Armstrong Cork Co., 548 F.2d 438,443, n.5 (2d Cir. 1977); San Filippo v. United Brotherhood of Carpenters and Joiners of America, 525 F.2d 508,511 (2d Cir. 1975).

Plaintiffs contend that there can be no danger of irreparable injury when a party has entered into a stipulation which provides for the preservation of the status quo. This court has affirmed the denial of a preliminary injunction where counsel for the parties in dispute had stipulated that the action which irreparably threatened the plaintiffs would not take place during the litigation. Chris Craft Industries, Inc. v. Bangor Punta Corp., 526 F.2d 569,573 (2d Cir. 1970). Essentially the same arrangement has been entered into here.

A close reading of the stipulation entered into by the parties (62a) reveals that the owners agreed that plaintiffs' attorney should hold the disputed H.U.D. rentals in escrow pending final determination after any appeals. Plaintiffs submit there can be no finding of irreparable injury where a party voluntarily agrees to accept the escrow of funds it sought to obtain in its motion for a preliminary injunction. Indeed, a comparison of the stipulation with the order of preliminary injunction (125a) clearly demonstrates that the stipulation functioned to preserve the status quo and afforded the owners the same relief that was obtained in the injunction.

CONCLUSION

It is respectfully submitted that the preliminary injunction appealed from should be dissolved, and an order issued directing the disbursement of all funds held in escrow which were collected pursuant to the void preemption order of September 1, 1976 prior to October 11, 1977.

Dated: New York, N.Y., January 31, 1978.

Respectfully submitted,

Rosenstein & Kahn
Attorneys for Plaintiffs-Appellants

Marc Kahn
Barney Rosenstein
of counsel.

GRAMERCY SPIRE TENANTS' ASSOCIATION,
Plaintiff,
-against-
PARICIA ROBERT HARRIS, as Secretary of the
Department of Housing and Urban Development;
THE DEPARTMENT OF HOUSING & URBAN DEVELOPMENT;
and MORRIS SOSNOW, JERROLD A LIEBERMAN, and
LEONARD SCHWARTZ, individually and as co-
partners in 16th STREET ASSOCIATES,
Defendants
-and-
PATRICIAN GRANT, JAMES N. PALIK, ROSALYN
RUSALEM, THE CONCILIATION AND APPEALS and
THE HOUSING AND DEVELOPMENT ADMINISTRATION
OF THE CITY OF NEW YORK,
Additional Defendants
on counterclaim

-1-

Rent Stabilization Law of 1969 with respect to regulation of rents in the building owned by associates located at 160 Third Avenue (142 East 16th Street), New York City, bearing Project No. 012-00880 ("Gramercy Spires") and directing HUD to provide plaintiff and additional defendants on the counterclaim notice of an an opportunity to be heard with respect to any application made by Associates for pre-emption, and the attorneys for the respective parties having been heard, and the Court having filed its memorandum and order dated September 16, 1977, it is

ORDERED, ADJUDGED AND DECREED:

1. That the pre-emption regulation promulgated by the Secretary of HUD, 24 C.F.R. Sec. 403.1-403.6 is validly promulgated pursuant to the provisions of the National Housing Act of 1934, as amended, 12 U.S.C. Sec. 1701, et seq. and the Department of Housing and Urban Development Act of 1965, 42 U.S.C. Secs. 3531, 3532 and 3535;

2. That the application of the regulation results in a direct conflict with state and local laws governing rent regulation in the City of New York, and, accordingly under the Supremacy Clause of the United States Constitution, Article IV, Clause 2, said local rent control legislation must give way;

3. That in all other respects Associates' motion, including its request for a preliminary injunction, is denied;

4. That plaintiff's cross motion for summary judgment is granted on the due process claim and the order of HUD dated April 6, 1976 preempting the operation of the New York City Rent Stabilization Law of 1969 with respect to the regulation of rents in the Gramercy Spires is null, void and of no further force and effect;

5. That the matter is remanded to HUD for further proceedings on Associates' application for pre-emption in which the tenants at Gramercy Spires will be afforded the following procedural safeguard to which they are constitutionally entitled:

(a) notice to the tenants at the time of Associates' filing of an application for preemption pursuant to 24 C.F.R. Sec. 403.1-403.6;

(b) an opportunity for the tenants to inspect all materials submitted by Associates to HUD in support of the application;

(c) an opportunity for the tenants to submit opposing materials to HUD in written form; and

(d) a written statement from HUD setting forth the reasons for its decision granting or denying pre-emption;

6. That HUD shall formulate such specific procedures and timetables as will be consistent with the Court's Memorandum and Order dated September 16, 1977 and this Judgment;

7. That the Court expressly determining, pursuant to

Rule 54(b) F.R.C.P., that there is no just reason for delay in entering final judgment as hereinabove set forth, hereby expressly directs that final judgment as hereinabove set forth be entered and the same hereby is entered.

signed: William C. Conner

WILLIAM C. CONNER
U.S.D.J.

Judgment entered this
13th day of October, 1977

Clerk, United
States District Court for the
Southern District of New York



RECEIVED
U.S. ATTORNEY
EAST DIST. N.Y.

JAN 31 5 13 PM '78

Joseph H. K. ...

2 Copies Received

January 31, 1978

Squadron, Albany, New York & ...

by 118

THREE COPIES OF THE WITHIN PAPER
HAVE THIS DAY BEEN RECEIVED AT THE
OFFICE OF THE CORPORATION COUNSEL
FEB 12, 1978
CORPORATION COUNSEL

Two

COPY RECEIVED
FEB 1 1978
ELLIS D. FARINKE
ATTORNEY FOR

Wm. ...

10:55 PM